



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 4, 1998

Ms. JoAnn S. Wright
Walsh, Anderson, Underwood, Schulze & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR98-0597

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113160.

The Grapevine-Colleyville Independent School District (the "school district") received a request for "[c]opies of all invoices, itemized billing statements, records of payment, and related correspondence to and from any and all school attorneys since September 1, 1995 up to and including November 1997."¹ You claim that the attorney fee bills are excepted from disclosure under sections 552.026, 552.101, 552.103, 552.105, 552.107, and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

The fee bills contain references to several students. You claim that the students' identities are excepted from disclosure under sections 552.026 and 552.114 of the Government Code. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. "Education records" under FERPA are records that

¹The requestor seeks five additional categories of information which you indicate have already been made available to him.

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986).

In this instance, you have submitted to this office legal bills containing student names. The legal bills are education records under FERPA. Prior to releasing the legal bills to the requestor, FERPA requires the school district to delete information from the fee bills to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). We have marked the information in the legal bills that identifies students. This identifying information is deemed confidential under FERPA and must be withheld from disclosure.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103. Open Records Decision No. 588 (1991). Litigation cannot be regarded as "reasonably anticipated" unless we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

You have demonstrated that the school district is a party to pending litigation in one case and anticipates litigation in two other cases. *See* 19 T.A.C. § 89.1151 *et seq.* Some of the information in the fee bills relates to these cases and is, therefore, protected from disclosure under section 552.103(a).² We have marked this information accordingly (see markings on fee bills from Walsh,

²We note that if the opposing parties in the litigation have seen or had access to any of the information at issue, there would be no justification for withholding that information pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Anderson, Underwood, Schulze & Aldridge, P.C.). On the other hand, you have asserted without sufficient explanation that section 552.103(a) applies to portions of the fee bills from Rohne, Hoodenpyle, Lobert, Myers & Scott, P.C. We conclude that you have not met your section 552.103(a) burden with respect to these fee bills.

Section 552.105 excepts from disclosure information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

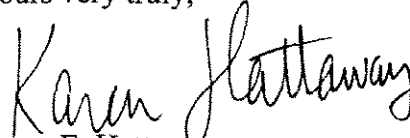
Section 552.105 was designed to protect a governmental body's planning and negotiating position with respect to particular transactions. Open Records Decision No. 564 (1990) at 2. This exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. Open Records Decision Nos. 357 (1982) at 3, 310 (1982) at 2. You note that the school district has a real estate transaction pending, but you offer no further description of the transaction. Based upon our examination of the fee bills, we have marked the information in the fee bills that appears to identify the parties to the transaction and the location of the property involved. The school district may withhold the information we have marked under section 552.105.

Finally, you argue that portions of the fee bills may be withheld under the attorney-client privilege. Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See* Open Records Decision No. 589 (1991). We have marked the portions of fee bills that appear to be client confidences. We are unable to determine and you have not explained how or why the remaining information is protected under section 552.107(1) as attorney advice and opinion or client confidences. The school district may withhold the marked information. The school district must release all information that we have not marked as protected.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 113160

Enclosures: Marked documents

cc: Mr. Dillon Marquis Routt IV
3313 Sweet Gum Lane
Grapevine, Texas 76051
(w/o enclosures)